

91-534

(1)

Supreme Court, Fla.  
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NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1991

HORACE L. COLONEL,  
Petitioner,

-vs-

DOROTHY M. BUTEAU,  
JESSIE FAY SIMMONS JR., and  
HENRY THOMAS SIMMONS.  
Respondents.

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PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

HORACE L. COLONEL  
PRO SE PETITIONER  
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## QUESTIONS PRESENTED FOR REVIEW

1. HAVE THE PETITIONER RECEIVE A FAIR AN IMPARTIAL HEARING AND WAS HIS UNITED STATES CONSTITUTIONAL RIGHTS UNDER AMENDMENT IV, IX AND XIV VIOLATED IN THESE PROCEEDING?

The lower court rendered a decision which injured the Petitioner by failing to render due process in the preceding, by not exhausting all issues presented before the court, before reaching its final decision April 13, 1989.

2. CAN A FLORIDA COURT VIOLATE IT'S PROBATE PROCEDURES?'

ON JUNE 14, 1965, THE HEIRS TO JESSE FAY SIMMONS SR. ESTATE WAIVED ANY CLAIM TO SAID PROPERTY TO THEIR STEP/MOTHER KATE COBB SIMMONS. IF THIS IS SO, WHETHER THESE WAIVER HAVE BEEN IN EFFECT OVER TWENTY "20" YEARS PRIOR TO THIS LAW

SUIT. JESSIE SIMMONS SR., PROBATE BEGAN IN 1964. FINALIZED IN 1965, AND AS OF JUNE 14, 1985, SUM 20 YEARS HAD ELAPSED IN THIS ESTATES, WHICH FURTHER BAR ANY FURTHER LAWSUIT IN THE WILL.

3. DID THE STATE COURT VIOLATE THE CONSTITUTION AND LAWS OF THE STATE OF FLORIDA?

1. Adverse Possession @78 "West's F.S.A. @@95.16, 95.17, 95.17(3), 95.23."

2. Adverse Possession @70 "West's F.S.A. @@ 95.16, 95.17. Horton", Perses & Ginsberg, "95.18, 95.23, now titled as F.S. 95.231, 95.231 (2)".

4. Did the Respondoants have knowledge of a hostile possession of said property in litigation as early as April 1978 throught "Jesse F. Simmons Jr." constitute bringing the knowledge home to the rest of the family?



5. WAS THE PETITIONER DISCRIMINATED AGAINST BY THE RESPONDENTS BECAUSE HE IS BLACK, and whether, Jurisdiction of this Appeal arises under Title VI of the Civil Rights Act of 1964? The Respondents took no legal action against Randal and Selma Cobb. Randal and Selma Cobb a White family between 1985 and 1987? But brought immediate action against the Petitioner because of his Race, out of hate.

6. WHETHER LARRY A. BODIFORD, Former Judge in Kate Cobb Simmons, Probate preceding in 1978, conspired with Jessie Fay Simmons Jr., to violate the Petitioner civil rights, and did this violation intently discriminate against the Petitioner because of his Race "Black", and did this violate the Florida Bar Rule Regulating the Bar which prohibit a lawyer who participated personally and substantially as a judge from participating in these proceeding?



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PETITION FOR WRIT OF CERTIORARI

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The instance application for writ of certiorari of review is filed herein by Horace L. Colonel, petitioner, following the decision of the Supreme Court of Florida, rendered on July 27, 1990, affirming the prior judgment of the First District Court of appeal of the State of Florida.

A timely application for re-hearing was filed. This application was denied on September 4, 1990.

### Preliminary Statement

DOROTHY M. BUTEAU, JESSIE FAY SIMMONS JR., and HENRY THOMAS SIMMONS, filed a the Petition in lower court and will be referred to herein as Respondents or Appellees. HORACE L. COLONEL is the defendant and will be referred to herein as Petitioner.

The following symbols will be used in this brief followed by the appropriate volume or page number(s):

CI - Court Index

A - Appendix

@ - Section

## LOWER COURT OPINIONS

The opinion and judgement of the Supreme Court of Florida is reproduced in the Appendix as A-29 thru A-32. No written opinion was issued by the Supreme Court of Florida.

## JURISDICTION

The judgment of the Florida Supreme Court of Appeals was entered on July 27, 1990. A timely petition for rehearing was denied on September 4, 1990, and this petition for certiorari was filed within 90 days of that date. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. Section 1254(1).

## CONSTITUTIONAL PROVISIONS

The Four Amendment to the Constitution of the United States states:

The right of the people to be secure in their persons, houses, papers.

The Ninth Amendment to the Constitution of the United States states:

The enumeration in the Constitution, of

certain rights, shall not be construed to deny or disparage others retained by the people.

Section 1 of the Fourteenth Amendment  
to the Constitution of the United States  
states:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges of immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (emphasis added).

Article I, Section 9, of the Florida Constitution states: No person shall be deprived of life, liberty or property

without due process of law. (emphasis added).

RULES OF CIVIL PROCEDURE

Rule 56(c) of the Federal Rules of Civil Procedure states in part:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers, to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. (emphasis added).

## Statement of the Case and of the Facts

### I

Jesse Simmons, Sr. and wife, Edith E. Simmons purchased lot 7 and a part of lot 8 in the Blackshear - Cooper subdivision Bay County, Florida, in 1951. Edith E. Simmons died in 1957 leaving Jesse F. Simmons, Sr. and three children, Dorothy Buteau, Henry Thomas Simmons and Jesse F. Simmons, Jr. Jesse F. Simmons, Sr. re-marry Kate Cobb in December 1957, the coup combining their estate/properties to create an Estate by it's Entirety.

In August 1964 Jesse F. Simmons, Sr. died survived by his wife, Kate Cobb Simmons.

### II

On 14th day of June, 1965, IN THE COUNTY JUDGE'S COURT BAY COUNTY, FLORIDA, IN RE: ESTATE OF JESSE FAY SIMMONS, Deceased, a PETITION FOR FINAL DISCHARGE was filed by Kate Cobb

Simmons. The Executrix of the Estate of Jesse Simmons, Sr. deceased, and requested the Court found and Order discharging her from all liabilities and obligations. A1 - A9

On June 14, 1965 Kate Cobb Simmons executed her rights under Probate Administrator preceding took sole possession of above describe property. The Petitioner alleges at the time that the Children of Jesse Simmons Sr., ages were Jesse Fay Simmons, Jr., age 37, Dorothy M. Buteau, age 35, Henry Thomas Simmons, age 34 all adults, and on June 14, 1965, waived their rights in their father estate Jesse F. Simmons, Sr. leaving his widow wife, Kate Cobb Simmons in solve procession of said real estate at 6147 E. Hwy 98 Panama City Florida. A1 - A13

Kate Cobb Simmons died in April, 1978, prior to her death she sold a part of her property 30% (approx. 1/3) of the

estate to Randal Cobb and wife, Selma Cobb. Randal Cobb and his wife Selma Cobb occupied this portion of the property from April 1977 until January 1985. At the time of death, Kate Cobb Simmons had three step/children of by her husband. Jesse F. Simmons, Jr. was named the partly benefactor of her estate, in which he took possession of this part of prorerty in 1978. A14 - A20

Jesse F. Simmons, Jr. took no legal action against Randal Cobb or his wife, Selma Cobb to recovery this part of property sold by Kate Simmons, from 1978 to 1985, yet in 1986 Jesse Simmons and Brenda Hendricks began to schemed against the Petitioner family in an attempt to take this property. This scheme required the enlistment of fraud on several family part, which was accomplish in these preceding. A21 - A40

**THIS PROPERTY BECAME THE SOLE PROPERTY OF KATE COBB SIMMONS, and record and**



title was change to be the same where required and ordered changed to the name of Kate Cobb Simmons. A10 - A13

In 1978 Kate Cobb Simmons died. The Probate Proceeding 78-175-CP was presided over by Judge Larry A. Bodiford which the Proceeding favored Jessie F. Simmons Jr. "only". Larry A. Bodiford is now attempting to reverse his previous decision of 1978 in this case, now as a private attorney, in an attempt to include the remaining Brother and Sister left out of the "Will" in the Probate Proceeding, which suggest a conspiracy between the parties. A14 - A20

## Argument

### I.

1. Kate Cobb Simmons on June 14, 1965, executed her rights and took sole possession of above described properties

2. The Children Jesse Fay Simmons, Jr., age 42, Dorothy M. Buteau, age 35, Henry Thomas Simmons, age 39 at the time, on June 14, 1965, made no claim to this property for more than twenty years.

3. Jesse F. Simmons, Jr. named as benefactor of the remanding estate of Kate Cobb Simmons, in which he took possession of in 1978, took no claim action from 1978 to 1986.

### II.

The Trial Court Committed Reversible Error by Failing to Address Petitioners' Motion in opposition of Attorney Larry Bodiford representation because he presiding over these matters in Kate Cobb Simmons Probate case number 78-175

CP in 1978, which favored Jesse Fay  
Simmons Jr..

III.

Whether, Jurisdiction further in  
this Appeal arises under Title VI of the  
Civil Rights Act of 1964 and the  
provisions of the Civil Rights Acts of  
1866, 42 U.S.C. @ 1981, Civil Rights Act  
1871, 42 U.S.C. @ 1983, 42 U.S.C.@  
1985, 42 U.S.C. @2000a(a) 42 @2000a-2(c)  
because of the petitioner and his family  
racial marriage status (Black and  
Oriental) and the doctrine of pendent  
Jurisdiction.

The Petitioner alleges three (3) grounds upon which he seek relief from this action.

(a) That the property purchased by the Petitioner was owned by Kate Cobb Simmons and that Randall and Semal Cobbs were bonafide buyers, and the later sale to the Petitioner was a bonafide sale.

(b) The cause of action by the Respondents are barred by the applicable statue of limitations.

(c) The Petitioner are the owners of 60 Ft. front, 50 Ft. back and 120 Ft. deep (surveyed June 10, 1986.) property by virtue of the legal purchase and if any other adverse possession against the Respondent.

(d) and if the Respondents beleive the they has standing based on estates of ~~their~~ property, the Petitioner claim that Respondents' cause of action is barred by the applicable statute of limitation F.S. 935.231 (2) states and was not

upheld by the Florida Courts, which states:

After twenty (20) years from the recording of a deed or the probate of a will purporting to convey real property no person shall assert any claim to the property against the claimants under the deed or will or their successors in title. The Petitioner further based their right to relief under this statute of limitations by virtue of the two (2) deeds dated December 19, 1957, creating a tenancy by the entirety. These properties were homestead properties at the time of this purported conveyance and may have been subject to the 1885 Florida Constitution, and that this type of conveyance may have void under this law. But Respondent aloud this condition to run the statute of twenty years and passing through three (3) third parties. Second that the heir of Jesse F. Simmons Sr. in June of 1965,

willfully signed waivers passing this property to the step/mother Kate C. Simmons widow of Jesse F. Simmons Sr.

F.S. 95.231 (2) apply to deeds conveying homestead property where there are interests of apparent innocent third parties involved.

In support of this position, the Petitioner cite to the Florida Supreme Court opinion in Barnott v. Proctor, 128 Fla. 63, 174 So. 404 (Fla. 1937) which involved third parties and held the twenty (20) year statute to bar an attack against a deed on homestead property. However, since the Barnott case, the Florida Supreme Court in Reed v. Fain,<sup>1</sup> had held that F.S. 95.23, now titled as F.S. 95.231, is not applicable to deeds conveying or devising homestead property.

F.S. Section 95.23, F.S.A., cannot make valid that which is void. According to this Court's opinion in Barnott v.

Proctor,<sup>2</sup> "the statute does not purport" to do so.

In the Barnott case the statute was construed to act as a bar to the assertion of the invalidity of the critical deeds executed in 1892 because of the Respondents' acquiescent conduct and failure to assert their claim before the rights of an innocent third party intervened. F.S.S. 95.23, F.S.A., never existed.

The statute was used as a guide and invoked upon equitable principles, particularly the maxim to the effect that one who fails to speak when equity and good conscience require him to do so will not be heard when equity and good conscience demand that he remain silent.

Mr. Justice Brown in a logical dissent in Barnott expressed that opinion that the so-called innocent third party could not properly be so classified because he was "put on record notice as to the

homestead character of the property" which was to be conveyed to him by mortgage deed. This reasoning was later adopted by the Florida Supreme Court in a strong opinion by Mr. Justice Thomas. See: Bigelow v. Dunphe, 197 So. 328. (emphasis supplied)

The Florida Supreme Court went on to state a page 867:

The Dunphe case demonstrates how difficult it is to be an innocent third party when dealing homestead property. The only instances which the Petitioner can envision at the moment, wherein one can attain the status of an innocent third party in transaction involving homestead property owned by the head of a family with a child or children then living, would be:

First--acceptance of a deed or mortgage predicated upon a valuable consideration and executed by both husband and wife; second--by



acquisition of a valid tax deed.....although F.S. 95.23, F.S.A., was not involved in Dunphe, the decision does support the postulate "Once a homestead, always a homestead" subject only to the limitations previously set forth herein.(emphasis supplied)

The Petitioner is the innocent fourth parties when dealing with this homestead property.

The undisputed facts establish the Respondent Jesse Simmons had record notice of the homestead character of the property, including the probate proceedings leaving estate to grantor, Kate C. Simmons.

A. "In, Kate died, I don't know if you are familiar with my father's ----but he married kate, which is neither my mother or the other kids' mother, and did Kate died sometime around '78".

Q. Two or three months, all right,

sir. And I believe that for at lease five or six years you have lived next door to this property while Mr. Cobb or tenants of his occupied the property, is that correct?

A. "Um ha (yes)".

This record notice would defeat any equities that the Respondent may claim under the heir deed the Cobbs received from Kate C. Simmons. The Cobbs did receive a deed predicated upon valuable consideration executed by widow wife. As grantees under the quit claim deed they acquired interest the grantor and are entitled to status as a bonafide purchaser.

The Petitioner s' claim adverse possession. The Petitioner is basing it's right to adverse possession upon the possession dated May 6, 1978, Randall Cobb and wife, Selma Cobb, and knowledge of Jesse Simmons Jr. testimony.

A. "Well, since Mayo died, I contacted a lawyer out of town and I don't know when that was. I have letters to that effect, and he didn't want to handle it. So, I let it drop more or less until Petitioner bought it". As a general rule the statute of limitations will not run against a remainderman until the termination of the life estate " See: Commercial Building Company v. Parslow,<sup>3</sup> The facts establish that at the time Kate C. Simmons signed the quit claim deed, property owned solely by Kate C. Simmons.

If Kate Cobbs Simmons held by virtue of a homestead rights, a life estate with the remainder interest vested in the three (3) children who are the Respondents in this action, The son Jesse Simmons, in 1978 should have made it clear in the 1978 probate that this was heir estate of his father. Instead

Jesse Simmons,

and wife accepted the remainder of Kate Cobb Simmons estate as a beneficiary.

A look at Commercial Building Company v. Parslow case, id., the Florida Supreme Court further held that the general rule. May not apply where it is shown that the remainderman had actual notice of the repudiation or abandonment by he life tenant of his status as such in this case.

PARTS OF JESSIE F. SIMMONS JR.

TESTIMONY

Q. Okay, and I believed that you told me that in '78 or '79 you went and talked with Attorney Mayo Johnston, is that correct?

A. Um ha (yes)

Q. Did you talk to him about this particular parcel of property?

A. Right."and of the holding by him of the property under a different and adverse right, which was the case where

Randal and wife Selma Cobb had actual procession of a part of property in question.

A. Well, Randal had rented the house to these people and I wanted to get them out and I thought that this might, but..."

A. Randal Cobb rented it to these people and I wanted to get them out and I thought it was mine.

Q. Okay, you thought the property was yours?

A. Yes.

or where the life tenant, in good faith and to the knowledge of the remainderman

A. "Well, since Mayo died, I contacted a lawyer out of town and I don't know when that was. I have letters to that effect, and he didn't want to handle it. So, I let it drop more or less until Petitioner bought it".

Q. Okay, and I believed that you told me that in '78 or '79 you went and talked

with Attorney Mayo Johnston, is that correct?

A. Um ha (yes)

Q. Did you talk to him about this particular parcel of property?

A. Right."

A. Well, I made an appointment with Mr. Johnston pertaining to some folks that lived in there. I wanted to get them out and that is when I first, why I went to him, legal action, and then that went on from that to what it is today."

Court Index "Vol. II Page 9 Line 21

A. Well, Randal had rented the house to these people and I wanted to get them out and I thought that this might, but..."

A. Randal Cobb rented it to these people and I wanted to get them out and I thought it was mine.

Q. Okay, you thought the property was

yours?

A. Yes.

Here, the transfer of the fee simple title may have taken place when Kate C. Simmons, in 1977 executed a quit claim to the Cobbs. The Cobbs then executed a warranty deed to the Petitioner's in 1985. As noted previously, the Cobbs only held title by virtue of a quit claim deed, they acquired interest through their grantor and were entitled to protection as a bonafide purchaser. See: *Myers v. VanBuskirk*, *supra*. Applying the rationale of the *Hingson* case, *supra*., the statute of limitations for adverse possession begin to run in this case first in the death Jesse Simmons Sr. in 1964, and then against Jesse Simmons Jr. in Kate C. Simmons estate in May, 1978.

Even if there was a title claim, not as a life tenant but through some other source, or where there has been ouster

and disseisin of the life tenant or by one claiming by, through or under him, and this under claim of right or color of title followed by adverse possession for the statutory period, or when there is some special independent equity in favor of the purchaser who claims under a conveyance from the life tenant.

.....112 So. at 381. In Hingson v. Langden,<sup>4</sup> the First District Court of Appeal held that under facts similar in nature to this case, adverse possession by the grantee under a warranty deed from the life tenant was not shown as against a remainderman where the facts did not show actual knowledge by the remainderman that the life tenant had purported to transfer a fee simple interest in the property, even if taxes were paid and the property mortgage by the grantee. which is not the case in these matters. From the records it is clear that the heirs had actual



knowledge of the remainderman in Jesse Simmons Sr. estates, and waiver such claim.

The Petitioner or their predecessors in title/procession, the Cobbs, adversely possess the property they're claiming for a period of seven (7) years from May, 1978.

Petitioner carry adverse possession under color of title stemming from by Randal Cobb and Selma Cobb procession. In Simpson v. Lindgren,<sup>5</sup> the Court stated:

Although there is authority to the contrary, we subscribe to the rule that the doctrine of color of title is available only in cases where the instrument purporting to be a conveyance is accepted in good faith and in the honest belief that it vest the title in the claimant.....

We do not believe that adverse possession under claim of color

of title should be established where the title is accepted with knowledge of its invalidity.(at page 441)

The undisputed facts establish that Randal Cobb was the brother of Kate C.— Simmons and Selma Cobb was Kate C. Simmons's sister-in-law, "third parties". As noted previously, the quit claim deed carries with it notice of every defect that may be in the grantor title, and a grantee under a quit claim deed acquires interest and passed it on, the grantor had and is entitled to protection as a bonafide purchaser. The instrument purporting to be the conveyance was accepted in good faith and the honest belief that in vested title in the claimant, first from Kate C. Simmons, to Randal and wife Selma Cobb and then to the Petitioner's.

As to adverse possession without color of title, under F.S. 95.18 the Petitioner have showed by clear and

convincing proof the elements of adverse possession. The proof is clear and positive of adverse possession, by payment of taxes and occupation for the full statutory period, no title by adverse possession can be adjudged.

With this element of law Kate C. Simmons, under her rights as and heir of this property. The children waive their rights to the real property of Jesse Simmons Sr. estate in 1964.

The facts as were shown in the deposition which has been filed of record. That's of Jesse F. Simmons, Jr., I think there the facts are, number one is that since the deed in 1977 from Kate to her brother, Mr. Cobb, that Mr. Cobb or tenants of Mr. Cobb and Mr. Petitioner have been in constant possession of that property. That none of the Respondents paid for the taxes on the property and the taxes were paid for either by Mr. Petitioner or his

predecessor in title. The other thing, I think that's important is that in the deposition

Mr. Simmons states that as early as 1979 or 1978. I believe that he did have some questions with regard to what ownership or what interest he might have in this property, that he sought the advice of counsel, Mayo Johnston, and that he never pursued anything any further past that point until instituting this litigation in 1987.

Basically the Petitioner argue first of all the statute of limitations. Florida statute 95.231 provides, that any deed which has been placed of record for a period and is of record for a period of twenty years cannot be challenged by any person who may assert a claim as to that property. And it's the Petitioner position that this twenty year statute of limitations is applicable to this parcel and applicable to the deed in

which Jesse attempted to convey the property to Kate and himself to create the tenancy by the entirety back in 1957. This issue has been the subject matter of a great deal of litigation and has evolved into three Florida Supreme Court cases.

The first case that the Petitioner will cite to the court is the case of Barnott versus Proctor which was a 1937 case.

In that particular case the Supreme Court of the State of Florida held that the twenty year statute of limitations is a bar to an action by children where homestead property was involved where third parties intervened before the action is instituted. In this particular case what happened here is there was attempted transfers back and forth between husband and wife ultimately with the title ending up in the wife. The wife went out and mortgaged the property. The property was foreclosed.

It was subsequently sold to third parties and in essence what the court said was is that the deed to the wife, even though it was void and even though it was homestead property, since it had been of record for twenty years prior to the institution of the suit by the children to set it aside that because you'd had intervening third parties who had come in and gotten an interest in that property that the statute was applicable and that they could not challenge that deed. The Petitioner believe that's to be the very first case.

The next case that the Florida Supreme Court heard on relatively the same issue was the case of Thompson versus Thompson and I think that, you know, I don't think there's any disagreement among the parties what that case held. This held that the twenty year statute was applicable and that the suit by the

children to set aside the attempted conveyance to the wife since it had been of record for more than twenty years was barred by the applicable statute of limitations. The court specifically held that the twenty year statute was applicable to homestead. That is Thompson versus Thompson.<sup>6 70</sup> That case then was followed by the case of Reed v. Fain was a 1961 case. Basically this case, the original opinion of the court upheld the decision in Thompson v. Thompson. On a rehearing of the matter the court reconsidered its earlier opinion and basically overruled Thompson v. Thompson and said that the statute of limitations is not going to be applicable where you're talking about homestead period with one exception, they recognized in that particular case that Thompson v. Thompson was based on Barnott versus Proctor.

In that decision of the court there is

one thing that they put. In fact the court italicized it or whatever to give emphasis to it. In the old ruling Thompson versus Thompson they said that one very important thing that has to be remembered in Thompson versus Thompson or in the Fain case was the fact that you had no interest of any innocent third parties that are involved in this particular case. So what they did is they overruled Thompson which said when there's no intervening third parties that statute's not going to be applicable because you're talking about just parties who have an interest in it as a result of the fact that it's homestead. They did not overrule, in fact they upheld the case of Barnott which because they distinguish and they say here in this particular case now that we're overruling Thompson, we're saying that we overrule it to the extent that you don't have any innocent



third parties that are involved in that particular case.

It's the Petitioner position that by virtue of the fact that Mr. Cobb acquired title to the property and the fact he subsequently sold it to Mr. Petitioner for valuable consideration upon which Mr. Petitioner placed a mortgage to Associates Financial that we have innocent third parties that are involved in this particular case and that since the twenty years is long since past since that deed's been of record that the Respondents in this particular case are barred from bringing this action by virtue of that statute. That basically is our argument as to that particular point. The Petitioner believe the Respondents are disbarred and it's too late to bring this action.

1. Kate Cobb Simmons on June 14, 1965, executed her rights and took sole possession of above described properties

as per her right in the 1957 estate by it's entireties, which went unchallenged by the children.

2. In fact he Children Jesse Fay Simmons, Jr., age 42, Dorothy M. Buteau, age 35, Henry Thomas Simmons, age 39 at the time, on June 14, 1965, waived their rights.

3. Leaving this property to their step-mother in hold.

4. Jesse F. Simmons, Jr. named as benefactor of the remanding estate of Kate Cobb Simmons, in which he took possession of in 1978.

II. The Trial Court Committed Reversible Error BY Failing to Address Appellants' Motion in opposition of Attorney Larry Bodiford who representation after presiding over these matters in Kate Cobb Simmons Probate case number 78 175 CP in 1978.

1. Larry Bodiford was the Probate Judge who Administered Kate Cobb Simmons

Probate case number 78 175-CP.

2. That Attorney Larry Bodiford, is now the Attorney representing the Respondents is this lawsuit, which in itself violate RULE 3-7.17 FLORIDA STATUTES SUPERSEDED.

3. Did Judge Larry Bodiford in 1978 in case number 78 175 CP representation the public in good fate in the probate proceeding of Kate Cobb Simmons.

III. In light of the on going misconduct by Attorney Larry Bodiford, and the unusual friendship between Judge Don Sirmons and Attorney Bodiford, the Appellants Motion Judge Don Sirmons, to Recluse Himself from this case, to free him of the trouble decision he had to make in this case.

#### IV.

That this case is a clear case of Racial Discrimination against the Petitioner family because of their race "Black/Oriental".

1. The Petitioner's a Black/Oriental family.
2. The Cobbs a White family.
3. They both had possession of this of said property.

A. Jesse Simmons, Jr. has such a hate against the Petitioner family member, that he has risked losing a greater portion of his 70% (approx.) of his heir rights to his brother Henry T. Simmons and sister Dorothy Buteau by filing this lawful suit.

## THE QUESTION IS SUBSTANTIAL

The basic issues before this court are; WHETHER THE PETITIONER ADVERSE POSSESSION THIS PROPERTY, under Color of title, or acquire title by adverse possession. The Petitioner claim color of title by qualify under continuous possession for a period of seven years, whereas the Petitioner without color of title, qualify by holding open, continuous, actual hostile possession, by the Petitioner or his predecessor and paid all taxes for a period of seven years from 1978 through 1986, with a return of said land for taxes during the first year of occupation and enclosure of occupying the land for seven-year period. DeRoche v. Winski, App., 409 so.2d 41 (1981).

WHETHER the Petitioner held Continuity possession of this disputed property and showed color of title to the property. The Petitioner purchased and recorded of

the deed, establish that he held continuous, exclusive, open and notorious adverse possession of the disputed property for at least seven years prior to the filing of this action. Whereby the Petitioner or his predecessor paid taxes for the last two years, maintained the property for the last twelve years, and presented no evidence regarding any acts of possession by their predecessors since 1978. Bonifay v. Dickson, App. 1 Dist., 459 So.2d 1089 (1984).

WHETHER Kate Cobb Simmons, the step/mother in 1964 under Possession adverse in fact and intent action to secure title to property from her cotenant heirs in probate proceeding, which was sufficient to establish the mother's intent to claim exclusive possession of property and cut off step/children's interest in land. Kate Cobb Simmons action of 1964 in Jessie Fay Simmons Sr., probate

proceeding, and the waiver of the children constitute the possession of all tenant's in common the act of bring home to the other heirs the knowledge that the step/mother intended to hold sole prosession and exclusive right or title to this property in dispute. This was acknowledged by the waiver and uncontested fact by the remaindering heirs from 1964 to present, is over twenty years. A1 - A13

WHETHER action by the heir Jessie Fay Simmons Jr., in 1978 to secure title to property from cotenant heirs through fraudulent probate proceeding was sufficient to establish his intent to claim exclusive possession of property and cut off his brother and sister interest in the land. And the action by the Jessie Fay Simmons Jr., in 1978 which he secure title to property from cotenant heirs, constitute the possession of all

tenant in common is the act of brings home to the other heirs the knowledge that the Petitioner claims the exclusive right or title to this property in dispute. And that Jessie Fay Simmons Jr., action through fraudulent probate proceeding was sufficient to establish his intent to claim exclusive possession of property and cut off his brother and sister interest in the land. Ruick v. Tvarkins (1976) Conn 149, 367 A2d 1380.

WHETHER the Petitioner received a fair and impartial hearing in these proceedings, and whether the Florida Court violate the rights of the Petitioner under the United State Constitution, Florida State Constitution and or Florida Status;

a. by denying the Petitioner due process whereby Petitioner continuous use of property since 1978, and had returned and paid taxes on property since that date,



had the Petitioner alleged facts sufficient to stay cause of action for adverse possession both with and without color of title 1978 deed. Townsend v. Ward, App., 429 So.2d 404 (1983).

b. F.S. 95.231 "Limitation" Five years after the recording of a deed or the probate of a will purporting to convey real property, from which the person owning the property attempted to convey or devise it, the deed or will shall be held to authorize the conveyance or devise of, or to convey or devise, the fee simple title to the real property, or any interest in it, of the person signing the instrument, as if there had been no lack of seal or seals, witness or witnesses, defect in acknowledgment or relinquishment of dower, in the absence of fraud, adverse possession, or pending litigation. The probate deed of Jessie Fay Simmons Sr., should be consider as evidence in these proceeding. That after

20 years from the recording of a deed or the probate of a will purporting to convey real property, no person shall assert any claim to the property against the claimants under the deed or will or their successors in title.

c. F.S.95.231 is cumulative to all laws on the subject matter. Limitation where deed or will on record, in this section providing that the 1964 deed after 20 years from recording of a deed purporting to convey real property, no person shall assert any claim against such property under the deed or their successors in title, is not a traditional statute of limitation but is a curative act with a limitation provision. Holland v. Hattaway, App. 5 Dist., 438 So. 2d 456 (1983).

WHETHER on 14th day of June 1965, THE FINAL DISCHARGE Petition by Kate Cobb Simmons, Executrix of the Estate of Jesse Fay Simmons, Sr., deceased, an

Estate Tax Return has been filed and a No Tax Certificate has been issued and filed therein by the State of Florida, was properly sanctioned by the heirs. A1 - A13

Whether the Petitioner receive equal protection under the law. And Whether;

1. Adverse Possession @78, Where testatrix will under which occupant of premises and her predecessors claimed title to property had been recorded in public records, occupant and her predecessors had been in actual possession of premises from time to testatrix' death more than seven years prior to institution of occupant's quiet title suit and premises were used for ordinary use of occupant, occupant occupied premises under color of title for requisite period and was entitled to have her fee simple title quieted against adverse claims of daughter of testatrix and who allegedly held

property as homestead property at time of his death, notwithstanding that testatrix' devise of property was invalid. West's F.S.A. @95.16, 95.17, 95.17(3), 95.23.

2. Adverse Possession @70 "Color of title" within adverse possession statute means only apparent or semblance of title, as opposed to actual title.

West's F.S.A. @@ 95.16, 95.17. Horton, Perses & Ginsberg, Miami, for appellant. Worley, Guautier, & Sams, Miami, for Appelle. Defendant-appellant appeals a final judgement quieting plaintiff/ Respondent's fee simple title in real property.

Jesse Simmons Sr's. three children in equal shares. A Probate order dated June 14, 1965, recorded in the public records of Bay County, Florida and served as a basis for an order of administration. Eventually, Kate Cobb Simmons, the widow wife of Jesse Simmons Sr., received from

her three step-children by their waiver their interest in their father estate real property. A1 - A13

Randal and Selma Cobb, predecessors in title have been in actual possession of the property which they claimed if their have paid the taxes levied against the property, have maintained it, repaired it and kept it insured since 1977.

Thus, the only question presented to the court was to determination if whether or not Respondents, Jesse Simmons Jr., Dorothy Buteau and Henry Simmons sustained their burden of proving the essential facts to establish adverse possession under color of title against the Petitioner pursuant to @@ 95.16, 95.17, Fla. Stat., F.S.A., which read in part:

"95.16 Read actions; adverse possession under color of title; requirements

"Whenever it appears that the occupant, or those under whom he claims, entered

into possession of premises under claim of title exclusive of any other right, founding such claim upon a written instrument as being a conveyance of the premise in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the premises include in such instrument, decree, or judgement for seven years, the premises so included shall be deemed to have been held adversely.....

"95.17 Definition of possession and occupation under color of title "For the purpose of constituting and adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land shall be deemed to have been possessed an occupied in any of the following cases:

Within respect to @95.16, Fla.Stat., it is undisputed that the will of Jesse Simmons Sr., the written instrument

under which Respondent and their predecessors claim title to the subject property, was recorded in the public records of Bay County and furthermore, upon the death of Jesse Simmons Sr., Respondent and their predecessors have not been in actual possession of the premises. In addition with regards @95.17(3), Fla.Stat., it also is undisputed that the subject realty was used for the ordinary use of the occupant, i.e. for residential purposes in the case sub justice.

FLORIDA. Florida recognizes the tenancy by the entireties, which is automatically created when a conveyance is made to a husband and wife Fla. Stat.

@689.15; Knapp v. Fredricksen, 148 Fla. 311, 4 So.2d 251 (1941)). While designation of the grantees as husband and wife is not necessary, since they will still take as tenants by the entireties if they are in fact a married

couple, such designation is recommended so that the chain of title will clearly indicate the type of estate created (see *American Cent. Ins. Co. v. Whitlock*, 122 Fla. 363, 165 So. 380 (1936)).

Designation of grantees as husband and wife who are not in fact married will not create a tenancy by the entireties (*Kerivan v. Fogal*, 156 Fla. 92, 22 So.2d 584 (1945)), but will create either a tenancy in common (*Maliska v. Dion*, 62 So.2d 4 (Fla. 1952)), or a joint tenancy with right of survivorship (*Kent v. O'neil*, 53 So.2d 779 (Fla. 1951)).

When one spouse dies, the survivor acquires the entire estate. The estate acquired is not a new estate, since there is merely a change in the person holding and not a change in the estate held (*Bailey v. Smith*, 89 Fla. 303, 103 So. 833 (1925)). On divorce of the spouses, the tenants by the entireties become tenants in common (Fla. Stat. @



689.15]. The change in the nature of the estate results automatically on the dissolution of the marriage and the parties then each hold an undivided one-half interest in the property [see *Kennedy v. Van Dine*, 185 So.2d 693 (Fla. 1966)].

@ 260.23 FLORIDA: General Warranty Deed Creating Tenancy by the Entireties.

[1]-Comment

This form is a general warranty deed conveying an estate in fee simple with the grantees taking as tenants by the entireties with right of survivorship. Actually, a tenancy by the entireties is essentially a joint tenancy modified by the common-law doctrine of the unity of husband and wife. A tenancy by the entireties is created when a conveyance is made to a husband and wife. [Fla. Stat. @689.15; *Knapp v. Fredricksen*, 148 Fla. 311, 4 So.2d 251 (1941)]. To help keep a clear chain of title, the

grantees should be clearly designated as husband and wife, although failure to so designate them will not defeat the estate [see American Cent. Ins. Co. v. Whitlock, 122 Fla. 363, 165 So. 380 (1936)]. While identifying the grantees as husband and wife, this form also specifies that they are taking the property as tenants by the entireties with right of survivorship.

Finally, it is immaterial that the devise of the subject property by Kate Cobb Simmons in her will was invalid. For Color of title means only apparent or semblance of title as opposed to actual title. Moore v. Musa, Fla.1

Thus, concluded that the court was eminently incorrect in finding that Respondents had sustained their burden in fact as to their right to recovery of the subject property and thereupon entering judgment quieting their fee simple title against any adverse claims

of the defendant.

Cf. Chasteen v. Chasteen, Fla. App. 1968, 213 So.2d 509.

We must note that in Chasteen v. Chasteen, the issue of minor children at time their reversionary interest vested and who were not shown to have knowledge of his warranty deed simply because their were minors and may not have understood the their rights.

The District Court of Appeal, Rawls, J. held that the heir owned property adversely as to heir who know over 20 years before asserting their claim to the property that he claimed the property through title of his warranty deed rather than as heir and that he had cut timber paid taxes in property and rented it but evidence was insufficient as to heir who were minors at time their reversionary interest vested and who were not shown to have knowledge of his warranty deed."

Respondents all were adults, and all waivered their rights to their step/mother over twenty five years ago. Harrison et al. v. Speer Supreme Court of Florida, Division A. Nov. 21, 1927.

(syllabus by the court)

1. Adverse possession @ 31-Generally to perfect title by adverse possession, true owner's actual knowledge or notice of claim of ownership is not necessary.

As a general, rule, and in the absence of some special statutory provision to the contrary, in order to perfect title by adverse possession it is not necessary to show that true owner had actual knowledge or notice of the claim of ownership by the party in possession.

2. Adverse possession @ 33- One claiming title by adverse possession may show that in the vicinity of land in question he was reputed to be owner. One setting up title by adverse possession may show by testimony that in the

vicinity of the land in question he was reputed to be the owner.

3. Evidence @ 273 (3)-Ordinarily, declarations of possessor showing his claim as sole owner are admissible to show hostility of possession; declarations of adverse possessor showing claim to be sole owner are part of request of possession and are not inadmissible as self-serving declarations.

Ordinarily, the declarations of one in actual possession of land, showing that he claims to be the sole owner, are admissible as tending to show hostility of possession. Such declarations are part of the resgestae of possession, and are not objectionable as being self-serving declarations. Petitioner cites the case of Woods v. Montevallo Coal & Transp. Co.,<sup>2</sup> in which the following language is used:

This appears to be the only authority

cited to support the contention of Appellant that unless the Appellant lived in the same. In 2 C.J. p.77 @ 59, it is said:

"In the absence of some special statutory provision to the contrary, in order to perfect title by adverse possession it is not necessary that the true owner should have had actual knowledge or notice of the claim. If the claimant's possession is open and notorious under claim of title it is sufficient in its character, whether the true owner knew that facts or not. The claimant need not otherwise repudiate the title of others claiming the land, or notify them of his claim of title. On open, visible, and notorious possession by the adverse claimant the law presumes notice to the true owner in the absence of evidence that inquiries of the true owner, prosecuted with due diligence, did not disclose

such possession. Such possession is the equivalent of actual notice of the claim under which it is held, and if the owner fails to look after his interest until the title of the adverse claimant grows into maturity he has no one but himself to blame for the loss of his estate. Where the possession is notorious no declaration of abandonment of possession on the part of the owner is necessary in order that his title may be barred.

It will be observed from the number of authorities cited in support of the above paragraph that this statement of the law is supported by the weight of authority in this country. Notoriety of possession by one setting up title by adverse possession by one setting up title by adverse possession may be shown by testimony that in the vicinity of the land in question he was reputed to be the owner. 2 C.J. 269, @600, and

cases cited. In the case of Maxwell Land Grant Co. v. Dawson,<sup>3</sup> it was held that, upon the question of adverse possession of land, testimony that the land claimed was generally reputed to belong to the claimant was admissible. In Johnson v. Rhodes,<sup>4</sup> this court held that, where a defendant is claiming title to land by adverse possession, reputation of ownership may be given in evidence.

It is also quite generally held that the declarations of one in actual possession of land, showing that he claims to be the sole owner, are admissible as tending to show hostility of possession. Such declarations are part of the res gestae of possession, and are not objectionable as being self-serving declarations. 2 C.J. 269, §603, and numerous cases cited. In the case of Woods v. Montevallo Coal & Transp. Com., supra, cited by appellant, it was also



held that it is admissible, in order to sustain title by adverse possession, to ask a witness whether it was not generally known in the vicinity of the land that defendant's grantor claimed title.

The Chavez Estate case, however, recognized the rule to be that the husband must survive the wife to take all of the community property as his own. It also recognized the rule to be that the wife took her half of the community property freed from the control of the husband if she survived him. Survivorship of either the husband or wife over the other carried with it additional rights in the property not theretofore existing, to-wit; complete ownership in the husband's management of the wife's vested interest in the community if she survived him.

The Chavez Estate case, however, clearly recognized the rule to be that

each spouse, irrespective of survivorship, at all times had an ever-present and existing vested interest in the community property equal unto each other.

The case of *In re Chavez's Estate*, supra, specifically recognizes *Beals v. Ares*, supra, as authority for the rule in this jurisdiction that the wife's interest in the community property during coverture was equal to that of the husband, and to that extent there was no conflict between those two cases. Heirs of decedent, estate by entities, where, at time of marriage, marital home was owned by husband and another as joint tenants with right of survivorship upon the husband's death there was no property interest in home owned by him to which a homestead interest could attach for the benefit of his wife.

Absent proof of source of funds, widow could not recover for third party funds

transferred by husband during his lifetime which allegedly derived from entirety property on ground of unjust enrichment.

### Conclusion

With one exception, of course these are facts as were showed in the deposition which has been filed in the record. That's of Jesse F. Simmons, Jr., and Petitioners think these the facts are, number one is that since the deed in 1977 from Kate to Mr. Cobb or tenants of Mr. Cobb and now the Petitioner who have been in constant possession of this property. That none of the Respondent/ Appellees paid for the taxes on the property for the seven years in question however, the taxes were paid for either by Mr. Cobb or his predecessor in title. The other thing that's important is that in the deposition Mr. Jesse Simmons, stated that as early as 1978, that he did have some questions with regard to

what ownership or what interest he might have in this property, that he sought the advice of counsel, Mayo Johnston, and that he never pursued anything any further past that point until instituting this litigation in October 1986.

Basically first of all the statute of limitations. Florida statute 95.231 provides, that any deed which has been placed of record for a period and is of record for a period of twenty years cannot be challenged by any person who may assert a claim as to that property. And it's our position that this twenty year statute of limitations is applicable to this parcel and applicable to the deed in which Jesse attempted to convey the property to Kate and himself to create the tenancy by the entireties back in 1957. This issue has been the subject matter of a great deal of litigation and has evolved into three

supreme court cases.

I cited the case of Barnott versus Proctor which was a 1937 case. In that particular case the Supreme Court of the State of Florida held that the twenty year statute of limitations is a Bar to an action by children where homestead property was involved where third parties intervened before the action is instituted.

In this particular case what happened here is there was attempted transfers back and forth between husband and wife ultimately with the title ending up in the wife. The wife went out and mortgaged the property. The property was foreclosed. It was subsequently sold to third parties and in essence what the court said was is that the deed to the wife, even though it was void and even though it was homestead property, since it had been of record for twenty years prior to the institution of the

suit by the children to set it aside that because you had intervening third parties who had come in and gotten an interest in that property that the statute was applicable and that they could not challenge that deed. We believe that to be the very first case.

The next case we found was the supreme court heard on relatively the same issue was the case of Thompson versus Thompson and we think that, you know, we don't think there's any disagreement among the parties what that case held. This held that the twenty year statute was applicable and that the suit by the children to set aside the attempted conveyance to the wife since it had been of record for more than twenty years was barred by the applicable statute of limitations. The court specifically held that the twenty year statute was applicable to homestead. That is Thompson versus Thompson, 70 Southern 2d

555. That case then was followed by the case of Reed versus Fain a 1961 case.

In the Fain case basically in this case, the original opinion of the court upheld the decision in Thompson versus Thompson. On a rehearing of the matter the court reconsidered its earlier opinion and basically overruled Thompson versus Thompson and said that the statute of limitations is not going to be applicable where you're talking about homestead period with one exception, They recognized in that particular case that Thompson v. Thompson was based on Barnott versus Proctor. In that decision the court italicized it to give emphasis on point. In the old ruling Thompson versus Thompson they said that one very important thing that has to be remembered in Thompson versus Thompson or in the Fain case was the fact that you had no interest of any innocent third parties that are involved in this

particular case. So what they did is they overruled Thompson which said when there's no intervening third parties that statute's not going to be applicable because you're talking about just parties who have an interest in it as a result of the fact that it's homestead. They did not overrule, in fact they upheld the case of Barnott which because they distinguish and they say here in this particular case now that we're overruling Thompson, we're saying that we overrule it to the extent that you don't have any innocent third parties that are involved in that particular case.

It's my position that by virtue of the fact that Mr. Cobb acquired title to the property and the fact he subsequently sold it to the Petitioner for valuable consideration upon which the Petitioner placed a mortgage to Associates Financial that we have innocent third



parties that are involved in this particular case and that since the twenty years is long since past since that deed's been of record that the Respondents in this particular case are barred from bringing this action by virtue of that statute. I believe that Respondents are disbarred and it's too late to bring this action.

## II

This property in question in this lawsuit belonged to Kate Cobb Simmons, as a result of Probate in 1964 whereby all heirs, (children of Jesse Simmons, sr) waived their rights as beneficiaries of Jesse Simmons, sr. estate to there step mother, she in turn took this property from her step children under the laws of Florida at the time, which gave her such right over the adult children. Kate Cobb Simmons continuous lived on this property after the death of her husband in 1964, where in 1977

she transferred a part of this property to Randal and Selma Cobb and will the remainder to Jesse Simmons Jr., for which Jesse Simmons Jr. obtain in Probated after Kate Simmons death in 1978 as her benifactory.

If this court decides to affirm the lower court decision it must also reverse a twenty four year old Probate decision of Jesse Simmons, sr. estate Probate of 1965.

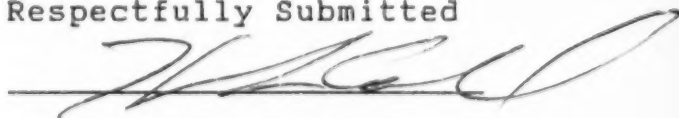
Further if it affirms the lower courts decision, judgement cannot given in Jesse Simmons, Jr. favor because of his full knowledge of a hostile possession by Randal and Selma Cobb as early as 1978, and he took no action.

### III

Even if the Court had fond in favor of Respondents, it should have only found in favor of Dorothy Buteau and Henry Simmons, and against Jesse Simmons, because of his knowledge of a hostile

possession by Randal and Selma Cobb as early as 1978, which support status requirements in favor of Petitioner for adverse possession. The Petitioner further believe that he was not given a fair and proper hearing. The Petitioners believe that the trial was a mistrial, and should be reversed or a rehearing ordered on the merits listed in this appeal, and on its face the 14th Amendment requires that this court answer the questions posed by this case and, issue a writ of certiorari to the Florida Supreme Court of Appeals to review its judgement in this case.

Respectfully Submitted



HORACE L. COLONEL

PRO SE PETITIONER

704 S. TYNDALL PKWY

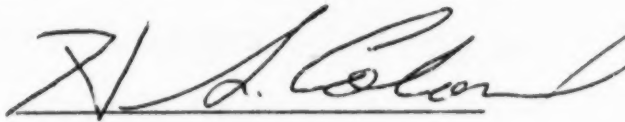
PANAMA CITY FLORIDA 32404 ..

904 872-9722

CERTIFICATE OF SERVICE

This is to certify that I have served three true copies of the above foregoing Petition by depositing copies of the same in the U.S. mail with the proper postage affixed thereto and addressed as follows:  
Larry Bodiford, Post Office Box 2528,  
Panama City Florida 32402,.

DATED: THIS 23nd day of September 1991.

A handwritten signature in dark ink, appearing to read 'H. L. Colonel', written over a horizontal line.

HORACE L. COLONEL

PRO SE PETITIONER

704 S. TYNDALL PKWY

PANAMA CITY FLORIDA 32404

904 872-9722

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IN THE COUNTY JUDGE'S COURT  
BAY COUNTY, FLORIDA  
IN RE: ESTATE OF JESSE FAY SIMMONS,  
Deceased

---

PETITION FOR FINAL DISCHARGE

COMES NOW Kate Cobb Simmons, the Executrix of the Estate of Jesse Fay Simmons, deceased, and requests of the Court an Order discharging her from all liabilities and obligations in the above styled estate, and in support hereof your Executrix would show unto the Court as follows:

1. By Waiver, attached hereto and marked Exhibit "A-1" and by reference made a part hereof, all of the beneficiaries and heirs to the estate of Jesse Fay Simmons, deceased, to-wit: Dorothy M. Buteau, Jesse Fay Simmons, Jr., Henry Thomas Simmons, and Kate Cobb Simmons, have waived all rights of an



accounting of the administration of the estate of Jesse Fay Simmons, deceased, and have further consented that publication of notice is unnecessary.

2. Distributions by the Executrix has been made in accordance with the petition for order approving distribution signed by all of the beneficiaries and heirs to the estate of Jesse Fay Simmons, deceased, to-wit: Dorothy M. Buteau, Jesse Fay Simmons, Jr., Henry Thomas Simmons, and Kate Cobb Simmons, which is evidenced by the receipt of distribution signed by Jesse Fay Simmons, Jr., Henry Thomas Simmons and Kate Cobb Simmons, which receipts were attached hereto and marked Exhibits "B", "C" and "D", respectively.

3. There was no distribution made to Dorothy M. Buteau, a beneficiary and heir at law to the estate of Jesse Simmons, deceased, since the property willed her subject to a life estate in

favor of Kate Cobb Simmons, which consists of the two parcels of property as described in the report of the appraisers, and is referred to in the Will as being located at 6147 E. Highway 98, Panama City, Bay County, Florida, constituted the homestead of the decedent, Jesse Fay Simmons and his wife, Kate Cobb Simmons, and there being no debts owing by the said heir to the decedent, Jesse Fay Simmons, there were no debts to be cancelled as provided for by said will, and further, there being no United States Government Savings Bonds owned by the said decedent, Jesse Fay Simmons, at the time of his death, there could be no distribution of such bonds unto the said heir, as provided for by the Will.

5. An Estate Tax Return was filed and a No Tax Certificate was issued by the State of Florida and filed herein.

6. all duties and obligations of your

Executrix have been fully and faithfully performed.

WHEREFORE, your Executrix prays that she be discharged from all obligations and duties in the above styled estate.

Kate Cobb Simmons

Executrix

Sworn to and subscribed before me this  
14 th Day of June, 1965.

Clerk

Exhibit "A-1" consist on WAIVER Signees  
were as follows:

Kate Cobb Simmons

Henry Thomas Simmons

Jesse F. Simmons, jr.

Dorothy M. Buteau

Exhibit "A-2" consist of "Petition for  
order approving distribution," in which  
the above named signees had witnessed.

Exhibit "B" is a receipt in which Jesse  
Fay Simmons, Jr. signed and the

witnesses where, James R. Murray and Ralph E. Bosworth.

Exhibit "C" is a receipt in which Henry Thomas Simmons, Signed and the witnesses where, (not legible) and Donald L. Moffat.

Exhibit "D" is a receipt in which Kate Cobb Simmons was the signee. And on 14th day of June 1965, THE FINAL DISCHARGE Petition by Kate Cobb Simmons, Executrix of the Estate of Jesse Fay Simmons, Sr., deceased, an Estate Tax Return has been filed and a No Tax Certificate has been issued and filed therein by the Sate of Florida. That each of the heirs and beneficiaries have waived any and all rights to an accounting by the Executrix, and further, have agreed that no publication of notice was necessary; that the property referred to in the Will of Jesse Fay Simmons, Sr., deceased, as being located as 6147 East Highway 98,

Panama City, Bay County, Florida, which consists of the two parcels of real property as described in the Report of Appraisers filed therein, constitutes homestead property and therefore does not constitute an asset of said estate for purposes of distribution or otherwise that there are no assets in said estate for distribution to Dorothy M. Buteau, a beneficiary and heir at law to said estate.

That all of the heirs, to-wit: Jesse Fay Simmons, Jr., Henry Thomas Simmons, Kate Cobb Simmons and Dorothy M. Buteau, have filed a petition for order approving distribution, and the Executrix has made distribution in accordance therewith; and it further appearing that the Executrix has faithfully administered the estate of said decedent, and the Court upon being advised of its opinion in the premises, it is therefore,

ORDERED AND ADJUDGED as follows:

1. That Kate Cobb Simmons, be and she is hereby discharged from any further or other obligations or requirements with respect to the Probate Laws of the State of Florida as executrix of the estate of Jesse Fay Simmons, Sr., deceased.

2. That the Order of Distribution agreed to in writing among the heirs and beneficiaries of the Estate of Jesse Simmons, deceased, be and the same was hereby approved, and as provided for thereby, each and every of the assets of said estate, excepting the distribution unto Henry Thomas Simmons and Jesse Fay Simmons, Jr., and the homestead property above referred to, are hereby adjudged to be the SOLE PROPERTY OF KATE COBB SIMMONS, and record title to the same where required and ordered changed to the name of Kate Cobb Simmons.

DONE AND ORDERED THIS 14th day of June 1965.

---

COUNTY JUDGE

Exhibit "A-1" is Waiver signed by the following persons:

Kate Cobb Simmons

Henry Thomas Simmons

Jesse F. Simmons, Jr.

Dorothy M. Buteau

Exhibit "A-2" is Petition for order approving distribution which has been witnessed by the above named signers.

Exhibit "B" Receipt signed by Jesse F. Simmons, Jr.

Exhibit "C" Receipt signed by Henry Thomas Simmons.

Exhibit "D" Receipt signed by Kate Cobb Simmons.

Exhibit "A-1" is Waiver signed by the following persons:

Kate Cobb Simmons

Henry Thomas Simmons

Jesse F. Simmons, Jr.

Dorothy M. Buteau

Exhibit "A-2" is Petition for order approving distribution which has been witnessed by the above named signers.

Exhibit "B" Receipt signed by Jesse F. Simmons, Jr.

Exhibit "C" Receipt signed by Henry Thomas Simmons.

Exhibit "D" Receipt signed by Kate Cobb Simmons.

IN THE LAST WILL AND TESTAMENT of  
JESSE 'FAY SIMMONS, SR. a resident of Bay  
County, Florida.



IN THE COUNTY JUDGE'S COURT  
BAY COUNTY, FLORIDA  
IN RE: ESTATE OF JESSE FAY SIMMONS,  
Deceased

---

**FINAL DISCHARGE**

THIS CAUSE having come on before the Court on the Petition of Kate Cobb Simmons, Executrix of the Estate of Jesse Fay Simmons, deceased, and it appearing that an Estate Tax Return has been filed and No Tax Certificate has been issued and filed herein by the State of Florida; each of the heirs and beneficiaries have waived any and all rights to an accounting by the Executrix, and further, have agreed that no publication of notice is necessary; that the property referred to in the will of Jesse Fay Simmons, deceased, as being located as #6147 East Highway 98, Panama City, Bay County, Florida, which

consists of two parcels of real property as described in the Report of Appraisers filed herein, constitutes homestead property and therefore does not constitute an asset of said estate for purposes of distribution or otherwise; that there are no assets in said estate for distribution to Dorothy M. Buteau, a beneficiary and heir at law to said estate; that all of the heir, to-wit That all of the heirs, to-wit: Jesse Fay Simmons, Jr., Henry Thomas Simmons, Kate Cobb Simmons and Dorothy M. Buteau, have filed a petition for order approving distribution, and the Executrix has made distribution in accordance therewith; and it further appearing that the Executrix has faithfully administered the estate of said decedent, and the Court upon being advised of its opinion in the premises, it is therefore,

ORDERED AND ADJUDGED as follows:

1. That Kate Cobb Simmons, be and she is hereby discharged from any further or other obligations or requirements with respect to the Probate Laws of the State of Florida as executrix of the estate of Jesse Fay Simmons, Sr., deceased.

2. That the Order of Distribution agreed to in writing among the heirs and beneficiaries of the Estate of Jesse Simmons, deceased, be and the same was hereby approved, and as provided for thereby, each and every of the assets of said estate, excepting the distribution unto Henry Thomas Simmons and Jesse Fay Simmons, Jr., and the homestead property above referred to, are hereby adjudged to be the SOLE PROPERTY OF KATE COBB SIMMONS, and record title to the same where required and ordered changed to the name of Kate Cobb Simmons.

DONE AND ORDERED THIS 14th day of June 1965.

---

COUNTY JUDGE

IN THE CIRCUIT COURT, FOURTEENTH  
JUDICIAL CIRCUIT OF THE STATE OF  
FLORIDA, IN AND FOR BAY COUNTY

PROBATE DIVISION

IN RE: Estate of

KATE C. SIMMONS,

Deceased

Case No. 78-175-CP

---

The Petitioner for distribution and discharge came before the Court for hearing, after due notice to all the heirs, and the Court finds that all claims have been satisfied or will be satisfied in the near future and being further advised in the premises therein, it is

ORDERED AND ADJUDGED that the Personal Representative shall filed proof of satisfaction of all claims with the Court prior to discharge. It is

ORDERED AND ADJUDGED shall make

available to Jesse Fay Simmons, Jr., and his wife, Madeline Simmons, or their attorney all tools, clocks, rings and clothes of the deceased Jesse Fay Simmons, Sr., presently in the possession of the Personal Representative. It is

ORDERED AND ADJUDGED that the chine chest shall be distributed and made available to Grace Malloy. It is

ORDERED AND ADJUDGED that the silverware and silver dishes including the silver in the cedar chest, shall be distributed to and made available Dorothy Bell Clark. It is

ORDERED AND ADJUDGED that in accordance with paragraph six of the will, all right, title and interest, if any, of the Deceased Kate Cobb Simmons in the following described real property located in Bay County, Florida, to-wit: Beginning at a point on the Easterly Right-of-Way line of U.S. Highway 98

which is 1296 feet Southwesterly from the intersection of said Right-of-Way line with the North boundary line of Section 25, Township 4 South, Range 14 West, and running thence South 51 degrees 02' East 373.7 feet to the shore of St. Andrew Bay; thence in a Southwesterly direction along the shore of St. Andrew Bay 60 feet; thence North right-of-way line of said U.S. Highway 98 to the Easterly Right-of-Way line of said U.S. Highway 98; thence North 38 degrees 58' East along the said Easterly Right-of-Way line of U.S. Highway 98; 60 feet to the point of beginning, together with all riparian rights incident to the said land. The above described land also being shown as Lot Eight (8) of a map of a subdivision entitled "Blackshear-Cooper First Addition to Long Point" and being located in Section 25, Township 4 South, Range 14 West, Bay County, Florida.

Beginning at a point on the Easterly Right-of-Way line of U.S. Highway 98, which is 1281 feet Southwesterly from the intersection of said Right-of-Way line with the North boundary line of Section 25, Township 4 South, Range 14 West and running thence South 51 degrees 02' East 372.4 feet to the shore of St. Andrew Bay 15 feet; thence North 51 degrees 02' West 373.7 feet to the Easterly Right-of Way line of said U.S. Highway 98; thence North 38 degrees 58' East along the said Easterly Right-of-Way line of U.S. Highway 98, 15 feet to point of beginning. The above described land being shown as the Southerly 15 feet of Lot Seven (7) of a map of a subdivision entitled Blackshear - Cooper First Addition to Long Point" and being located in Section 25, Township 4 South, Range 14 West, Bay County, Florida.

is hereby distributed in kind to Jesse



Fay Simmons, Jr., without the necessity of any further or other order or conveyance. It is

ORDERED AND ADJUDGED that the silverware and silver dishes including the silver in the cedar chest, shall be distributed to and made available Dorothy Bell Clark. It is

ORDERED AND ADJUDGED that the crystal shall be distributed and made available to James Allen McNeil. It is

ORDERED AND ADJUDGED that J.A. Smith and his wife, Edna Smith, shall have any and all interest in the home located on Degamma Avenue in Panama City, Bay County, Florida, more accurately described as:

The north 80 feet of Lots 22, 23 and 24, Block D, according to plat of Bayside, on file in the office of the Clerk of the Circuit Court, Bay County, Florida, in Plat Book 1, at page 77. Together with all and singular the

tenements, hereditaments and appurtenances thereto belonging.

Said property description contained the notation that the Grantee, Kate Cobb Smith and Edna McCaskill, were granted a life estate for and during the natural life of each of them and upon their death be fee simple title to the land above described shall then immediately vest in the survivor.

It is

ORDERED AND ADJUDGED that the rest, and remainder of the property in hand of the Personal Representative not subject to claims, fees or costs shall be delivered and made available to May Bell Mcneil. It is

ORDERED AND ADJUDGED that the Personal Representative shall and is hereby discharged upon the filing of satisfactory proof of satisfaction of claims as stated above.

DONE AND ORDERED in Chambers at Panama

City, Florida, this 29 day of September  
1978.

---

Larry A. Bodiford

Acting Circuit Judge

IN THE CIRCUIT COURT, FOURTEENTH  
JUDICIAL CIRCUIT OF THE STATE OF  
FLORIDA, IN AND FOR BAY COUNTY

DOROTHY M. BUTEAU,  
HENRY THOMAS SIMMONS,  
AND JESSE F. SIMMONS, JR.,

PLAINTIFFS,

-vs-

Case No. 86-2707

HORACE COLONEL and  
KANJANEE COLONEL and  
BANGKOK EXCHANGE MARKET, INC.,  
Defendant.

-----  
FINAL JUDGEMENT

THIS CAUSE having come before the  
Court for final hearing and the Court,  
having the evidence and testimony  
presented by the parties finding that:

1. The Order Denying Motion for  
Summary Judgement be and is hereby  
incorporated into this final judgement

as to the findings of undisputed facts and to the questions of law decided by the Court.

2. The quit claim deed executed by Kate C. Simmons to her brother, Randal Cobb, and his wife, Selma Cobb, was conveyed and accepted with knowledge of its invalidity. There is no evidence that Randal Cobb nor his wife, Selma Cobb, were mistaken as to the legal effect of the conveyance. This quit claimed deed cannot therefore constitute color of title sufficient to satisfy the requirement of F. S. 95.16. See: Simpson v. Lindgren, 133 So. 2d 439 (3 DCA 961).

3. As to the Defendants claim under F.S. 95.18 of adverse possession without color of title, the Defendants have the burden to show the elements of adverse possession. Here the Defendants are basing their claim upon the possession of property by their predecessor in

title, Randal Cobb and wife, Selma Cobb. As Randal Cobb is the brother of Kate C. Simmons who was the surviving spouse of the head of the household and owner of the homestead property, Jessie F. Simmons, Sr. In

Chasteen v. Chasteen, 213 So. 2d 509 (1 DCA 1968) the First District was faced with a factual situation similar to this case involving children of different spouses of the original head of the household and owner of the homestead property. The District Court stated at page 511:

Generally members of a family cannot acquire adverse possession against each other in the absence of a showing of a clear, positive and continuous disclaimer and disavowal of title, and an assertion of an adverse right brought home to the true owner a sufficient length of time to bar him from asserting his rights.

As between members of a family, proof of hostile holding requires unusually clear and convincing evidence. The possession of a tenant in common is presumed to be the possession of all members of the family or all cotenants until the one in possession brings home to the others the knowledge that he claims exclusive ownership and proves facts showing an ouster of the others--that is, act of possession inconsistent with and exclusive of the rights of the cotenants.

Under the facts of the instant case, the Defendants have failed to clearly prove the ouster and knowledge of the adverse claim of Randal Cobb and wife, Selma Cobb, by Dorothy M. Buteau and Henry Thomas Simmons, who were the children of Jessie F. Simmons and Edith E. Simmons. Furthermore, the evidence is clear that the heirs, Dorothy M. Buteau and Henry Thomas Simmons, were

never advised of the death of Kate C. Simmons until sometime in 1985. The Defendants have therefore failed to carry their burden of proof to establish adverse possession under F.S. 95.18. It is therefore

ORDERED AND ADJUDGED that the Plaintiffs, Dorothy M. Buteau, Henry Thomas Simmons and Jesse F. Simmons, Jr., be and are hereby declared to be lawful owners of and entitled to possession of the following real property in Bay County:

Beginning at a point on the Easterly Right of Way line of U.S. Highway 98, which is 1296 feet Southwesterly from the intersection of said Right of Way line with the North boundary line of Section 25, Township 4 South, Range 14 West, and running thence South 51 degrees 02' East 373.7 feet to the shore of St. Andrew Bay; thence in a Southwesterly direction along the shore



of St. Andrew Bay 60 feet; thence North 51 degrees 02' West 377.8 feet to the Easterly Right of Way line of said U.S. Highway 98; thence North 38 degrees 58' East along the said Easterly right of way line of U.S. Highway 98, 60 feet to point of beginning. The above described land also being shown as Lot Eight (8) of a map of a subdivision entitled "Blackshear-Cooper First addition to Long Point" and being located in Section 25, Township 4 South, Range 14 West, Bay County, Florida.

Beginning at a point on the Easterly Right of Way line with the North boundary line of Section 25, Township 4 South Range 14 West, and running thence South 51 degrees 02' East 372.4 feet to the shore of St. Andrew Bay; thence in a Southwesterly direction along the shore of St. Andrew Bay 15 feet; thence North 51 degrees 02' West 373.7 feet to the Easterly Right of Way

line of said U.S. Highway 98; thence North 38 degrees 58' East along of said Easterly Right of Way line of U.S. Highway 98, 15 feet to point of beginning. The above described land being shown as the Southerly 15 feet of Lot Seven (7) of a map of a subdivision entitled "Blackshear-Cooper First Addition to Long Point" and being located in Section 25, Township 4 South, Range 14 West, Bay County, Florida.

It is further

ORDERED AND ADJUDGED that the Plaintiffs, Dorothy M. Buteau, Henry Thomas Simmons and Jessie F. Simmons, Jr., are entitled to a Writ of Possession for said property and the Court will reserve jurisdiction to enforce the terms of this judgement. It is further.

ORDERED AND ADJUDGED that this Court

will retain jurisdiction to determine  
and award attorney's fees and costs if  
allowed.

DONE AND ORDERED this 13th day of April,  
1989, at Panama City, Bay County,  
Florida.

copies to:

William M. Atkinson, Jr., Esq.

Larry A. Bodiford, Esq.

John F. Daniel, Esq.

IN THE DISTRICT COURT OF APPEAL  
FLORIDA DISTRICT, STATE OF FLORIDA

HORACE L. COLONEL, wife  
KANJANEE COLONEL, and BANGKOK  
EXCHANGE MARKET,

NOT FINAL UNTIL TIME EXPIRES  
Appellants, TO FILE MOTION FOR REHEARING  
AND DISPOSITION THEREOF IF  
FILED

v. CASE NO. 89-1584

DOROTHY M. BUTEAU, HENRY  
THOMAS SIMMONS, and JESSE F. SIMMONS,  
JR. ,  
Appellees.

---

Opinion filed May 15, 1990.

An Appeal from the Circuit Court for Bay  
County, Don T. Sirmons, Judge.

Horace L. Colonel and Kanjanee Colonel,  
pro se, Panama City. Michael L.

McKinnon, Jr., Fort Pierce, for  
appellant Bangkok Exchange Market., for  
Appellants.

Larry A. Bodiford of Hutto, Nabors,  
Bodiford and Warner, Panama City, for  
Appellees.

PER CURIAM.

AFFIRMED.

ZEHMER, MINER, and ALLEN, JJ., CONCUR.

MANDATE

FROM

DISTRICT COURT OF APPEAL OF FLORIDA

FIRST DISTRICT

To the Honorable, the Judges of the  
Circuit Court for Bay County

WHEREAS, in that certain cause filed in  
this Court styled: \_\_\_\_\_

DOROTHY M. BUTEAU,

HENRY THOMAS SIMMONS,

AND JESSE F. SIMMONS, JR.

Case No. 89-1584

VS

HORACE COLONEL and Your Case No. 86-2707

KANJANEE COLONEL and

BANGKOK EXCHANGE MARKET

INC.

The attached opinion was rendered on

May 15 1990

YOU ARE HEREBY COMMANDED that further  
proceedings be had in accordance with  
said opinion, the rules of this Court  
and the laws of the State of Florida.  
WITNESS the Honorable Douglass B.  
Shivers.

Chief Judge of the District Court of  
Appeal of Florida, First District and  
the Seal of said court at Tallahassee,  
the Capitol, on this 29th day of June,  
1990

IN THE CIRCUIT COURT, FOURTEENTH  
JUDICIAL CIRCUIT OF THE STATE OF  
FLORIDA, IN AND FOR BAY COUNTY

DOROTHY M. BUTEAU, HENRY THOMAS SIMMONS,  
and JESSE F. SIMMONS JR.,

Plaintiffs,

vs. Case No: 86-2707

HORACE COLONEL and KANJANEE COLONEL and  
BANGKOK EXCHANGE MARKET, INC.,

Defendants.

---

NOTICE OF HEARING

To: Horace Colonel	Kanjanee Colonel
6010 E. Hwy 98	6010 E. Hwy 98
Panama City, FL 32401	Panama City, FL
32401	

Bangkok Exchange Market, Inc.  
c/o Kanjanee Colonel, Officer  
6010 E. Hwy 98  
Panama City, FL 32401



PLEASE TAKE notice that on October 3, 1990 at 8:30 a.m., or as soon thereafter as counsel can be heard, the undersigned will bring on to be heard the Plaintiffs, request for entry of a Writ o Possession pursuant to the Final Judgement entered herein on April 13, 1990, before the Honorable Don T. Sirmons, one of the judges of the above Court, at his Chambers in the Courthouse in Panama City, Bay County, Florida. PLEASE GOVERN yourself accordingly.

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to the above-named addressee(s), on September 21, 1990.

xc: Judge Sirmons

IN THE CIRCUIT COURT FOURTEENTH JUDICIAL  
CIRCUIT OF THE STATE OF FLORIDA, IN AND  
FOR BAY COUNTY

DOROTHY M. BUTEAU, HENRY  
THOMAS SIMMONS, and JESSE F. SIMMONS,  
JR.,

Plaintiffs

vs

Case No: 86-2707

HORACE COLONEL and KANJANEE  
COLONEL and BANGKOK EXCHANGE MARKET,  
INC.,

Defendants.

---

WRIT OF POSSESSION

THE STATE OF FLORIDA:

To the Sheriff of Bay County, Florida

YOU ARE COMMANDED to remove all  
persons from the following described  
property in Bay County, Florida:

Parcel: Beginning at a point on the Easterly Right-of-Way line of U.S. Highway 98 which is 1296 feet Southwesterly from the intersection of said Right-of-Way line with the North boundary line of Section 25, Township 4 South, Range 14 West, and running thence South 51 degrees 02' East 373.7 feet to the shore of St. Andrew Bay; thence in a Southwesterly direction along the shore of St. Andrew Bay 60 feet to the Easterly Right-of-Way line of said U.S. Highway 98; thence North 38 degrees 58' East along the said Easterly Right-of-Way line of U.S. Highway 98, 60 feet to the point of beginning. The above described land also being shown as Lot Eight (8) of a map of a subdivision entitled "Blackshear-Cooper First Addition to Long Point" and being located in Section 25, Township 4 South, Range 14 West, Bay County, Florida.

Parcel: Beginning at a point on the Easterly Right-of-Way line of U.S. Highway 98, which is 1281 feet Southwesterly from the intersection of said Right-of-Way line with the North boundary line of Section 25, Township 4 South, Range 14 West, and running thence South 51 degrees 02' East 372.4 feet to the shore of St. Andrew Bay; thence in a Southwesterly direction along the shore of St. Andrew Bay 15 feet; thence North 51 degrees 02' West 373.7 feet to the Easterly Right-of-Way line of said U.S. Highway 98; thence North 38 degrees 58' East along the said Easterly Right-of-Way line of U.S. Highway 98, 15 feet to point of beginning. The above described land being shown as the Southerly 15 feet of Lot Seven (7) of a map of a subdivision entitled "Blackshear - Cooper First Addition to Long Point" and being located in Section

25, Township 4 South, Range 14 West, Bay  
County, Florida.

and to put Plaintiffs, DOROTHY M.  
BUTEAU HENRY THOMAS SIMMONS and JESSIE  
F. SIMMONS, JR., in possession of it.

Dated this 3rd day of October, 1990.

DON T. SIRMONS, Circuit Judge

SUPREME COURT OF FLORIDA

Friday, July 27, 1990

Colonel, Horace L. \*\*

ET UX, ET AL., \*\*

Petitioner, \*\*

vs.

Case No 76,308

\*\*

BUTEAU, DOROTHY M., District Court of

ET AL., Appeal, 1st Dis-

trict - No. 89-1584

Respondent \*\*

\*\*

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed and no motion for rehearing will be entertained by the Court.

It appearing to the Court that the District Court of Appeal, First District, did not declare invalid a

State Statute or a provision of the  
State Constitution, and that, therefore,  
it is without jurisdiction, this appeal  
is hereby dismissed subject to  
reinstatement if jurisdiction is  
established on proper motion filed  
within fifteen (15) days from the date  
of this order. See Article V, Section  
3(b) (1), Florida Constitution.

A True Copy            W

cc: Hon. Raymond E. Rhodes, Clerk

Hon. Harold Bazzel, Clerk

TEST: Hon. Don T. Sirmons, Chief Judge

Horace L. Colonel

Michael L. McKinnon, Jr., Esq.

Sid J. White Michael Bodiford, Esq.

Clerk Supreme Court

SUPREME COURT OF FLORIDA

HORACE L. COLONEL, wife)	CASE NO.76, 308
)	
KANJANEE COLONEL and )	
)	
BANGKOK EXCHANGE MARKET)	
INC. )	DISTRICT COURT
Petitioners, )	CASE NO. 89-1584
)	
-VS-	
)	
)	LOWER COURT
DOROTHY M. BUTEAU, )	CASE NO. 86-2707
et al, )	
Respondents. )	

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MOTION TO STAY THIS COURT ORDER DATED  
JULY 27, 1990 AND  
NOTICES OF SUPPLEMENTAL AUTHORITY

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CONES NOW that Horace L. Colonel and  
Kanjane Colonel the Appellants motion  
this court to stay it's order dated July  
27, 1990 give this Notice of Supplemental  
Authority and NOTICE IS GIVEN filed a  
timely appeal to the Supreme Court and  
pursuant to Rule 9.030 (a)(1)(A)(ii),  
9.030 (a)(2)(A)(i) and 9.030 (a)(2)(B)(i)  
of the Florida Rule of Civil Procedure,  
the Appellants invokes jurisdiction of  
the Supreme Court of Florida to review



the decision of the First District Court of Appeal rendered June 13, 1990. The decision is within the Supreme Court jurisdiction, as stated in under Florida Statutes Constitution Revision "1968" Art V. @ 1 (29) an in Barrs v. State. 95 Fla. 75, 116 So. 2d (1928), Art V.4(11) (27) as in Bankers & Shippers Ins. Co. of New York v. Phoenix Assur. Co. of New York, 210 So. 2d 715 (1968), and Supreme Court jurisdiction 9 Fla. State L.Rev. 693 (1981). The Appellants further argues that the following review jurisdiction applies to this instance case:

- a. The Appellants argues that a Per curium affirmances without opinion from the First District court of appeal, makes a proper basis for conflict jurisdiction in Supreme Court, as in Charles E. Buker III, 7 Fla.State L.rev 295 (1979).
- b. The Appellants filing of this briefs on jurisdiction is in the Supreme Court of Florida jurisdiction. Gregory P. Borgognoni and Michael J. Keane, 54 Fla.Bar J. 510 (1980).
- c. Supreme Court has jurisdiction of this instance case in which

constitutional question has been raised at the trial level.

State ex rel. Williams v. Baker  
248 So. 2d 650(1971).

- d. The Supreme Court of Florida has jurisdiction to review conflicts between decision of District Court's appeal effecting Florida Constitution, which is govern by the Supreme Court. Reaves v. State, 485 So. 2d 829 (1986), and Jurisdiction to review on direct conflict certiorari State v. Young, 217 So. 2d 567 (1968).
- e. Further, where District Court of Appeal's dismissal of appeal was a short form order without any comment on the applicable principles of law, the Supreme Court has jurisdiction to review order on conflict exelsde. DeLoache v. De Loacha, 274 So. 2d 883 (2973) mandate conformed to 291 So. 2d 880 (1971).

WHEREBY the Appellants Horace L. Colonel and Kanjanee Colonel Appellants pray that this court stay it's order dated July 27, 1990, and admit Appellants Notice of Supplemental Authority and NOTICE GIVEN.

---

HORACE L. COLONEL

---

KANJANEE COLONEL  
6010 E. HWY 98  
PANAMA CITY FL 32404  
(904) 871-3751

IN THE SUPREME COURT OF FLORIDA

TUESDAY , SEPTEMBER 4, 1990

HORACE L. COLONEL,           \*\*  
ET AL.,

Appellant,               \*\* CASE NO. 76, 308

-VS-                       \*\*

DOROTHY M. BUTEAU,       \*\*  
ET AL,                   \*\*  
appellees.

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Appellants's Motion to stay This Court  
Order Dated July 27, 1990 is hereby  
denied.

cc: Horace L. Colonel, Pro Se

Micheal L. Mckinnon, Jr., Esquire

Larry Bodiford, Esquire

A True Copy

test:

Sid J. White

Clerk, Supreme Court

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

HORACE L. COLONEL,	)	
	)	NOT FINAL UNTIL
Appellant,	)	TIME EXPIRES TO
	)	FILE MOTION FOR
VS	)	REHEARING AND
	)	DISPOSITION THEREOF
	)	IF FILED
DOROTHY M. BUTEAU,	)	
HENRY THOMAS SIMMONS)	)	CASE NO. 90-3100
and JESSE F. SIMMONS)	)	
Appellees.	)	

---

Opinion filed May 22, 1991.

Appeal from the Circuit Court for bay  
County; Don T. Sirmons Judge.

Appellant, pro se.

Larry A. Bodiford of Hutto, Nabors.  
Bodiford and Warner, Panama City for  
Appellees.

PER CURIAM.

AFFIRMED

ZEHMER< BARFIELD and WOLF JJ concur.

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

HORACE L. COLONEL,	)	
	)	NOTICE OF APPEAL
Petitioners,	)	
	)	
-VS-	)	
	)	
DOROTHY M. BUTEAU,	)	CASE NO 90 - 3100
HENRY THOMAS SIMMONS)	)	
and JESSE F. SIMMONS)	)	
	)	
Respondents.	)	

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NOTICE OF APPEAL

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NOTICE IS HEREBY GIVEN that Horace L. ColoneL, Petitioner, invokes the certiorari jurisdiction of the United State Supreme Court to review the decision of this Court rendered May 22, 1991.

The decision of the First District Court of Appeal is within the Supreme Court's jurisdiction expressly and directly conflicts with Florida Status and Appellant Constitutional rights. The nature of the order is a final order

Affirming a lower court decision in this matter.

WHEREBY the Appellants Horace L. Colonel Appellants move that this court stay it's order dated May 22, 1991, and submit this NOTICE OF APPEAL IS GIVEN.

Dated this 18th day June 1991.

---

HORACE L. COLONEL

SUPREME COURT OF FLORIDA

TUESDAY , JUNE 27, 1991

HORACE L. COLONEL, \*\*

\*\* District Court of  
Appeal 1st District

Petitioners, \*\* NO. 90-3100

-VS- \*\*

DOROTHY M. BUTEAU, \*\*  
et al,

Respondents.\*\*

---

It appearing to the Court that it is  
without jurisdiction the Petition for  
Review is hereby dismissed. Jenkins v.  
State, 385 So. 2d 1356 (Fla. 1980).

No Motion for Rehearing will be  
entertained by this Court.

A True Copy  
Test:

H  
cc. Hon Jon S Wheeler, Clerk  
Hon. Harold Bazzel, Clerk  
Hon Don T. Sirmons, Judge

cc: Horace L. Colonel, Pro Se  
Larry Bodiford, Esquire

Sid J. White  
Clerk Supreme Court